

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

IN RE CHANGE OF NAME OF CRAWFORD

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. APP. P. § 2-102(E).

IN RE CHANGE OF NAME OF CRAWFORD.

JANELLE WEBER, ON BEHALF OF JACKSON LEE CRAWFORD,
A MINOR CHILD, APPELLANT,
V.
JORDAN CRAWFORD, APPELLEE.

Filed May 11, 2010. No. A-09-1123.

Appeal from the District Court for Saline County: VICKY L. JOHNSON, Judge. Affirmed.

Jane F. Langan and Sarah S. Pillen, of Rembolt Ludtke, L.L.P., for appellant.

Stefanie Flodman and Cameron Guenzel, Senior Certified Law Student, of Johnson Flodman Law Firm.

INBODY, Chief Judge, and MOORE and CASSEL, Judges.

MOORE, Judge.

INTRODUCTION

Janelle Weber (Janelle) appeals from the order of the district court for Saline County, which denied her application to change the surname of the parties' minor child from Jackson Lee Crawford to Jackson Lee Weber-Crawford. Pursuant to Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument. For the reasons set forth herein, we affirm.

BACKGROUND

Jackson was born in March 2007 and is the biological son of Janelle and Jordan Crawford (Jordan). Janelle is the custodial parent pursuant to a paternity order entered by the district court for York County on March 9, 2009. The paternity order refers to the child as "Jackson Lee

Crawford” but does not specifically address the child’s surname. At some point not clear from the record, the parties ended their dating relationship. On August 25, Janelle filed a petition for name change in the district court, seeking to change Jackson’s surname to Weber-Crawford.

Janelle’s petition was heard on September 28, 2009. Janelle testified that Jackson has consistent contact with the extended Weber family. Based on her observations and understanding of Jackson’s development, Janelle testified to her belief that Jackson did not understand what his last name was. In describing her motivations for seeking the name change, Janelle testified that she would like Jackson to be able to identify with both sides of his family. Janelle stated that she would promote Jackson’s use of both names if the court were to grant her request and testified to her belief that the name change would be in Jackson’s best interests.

When asked why he opposed the name change, Jordan testified that the parties had agreed when Jackson was born that his surname would be Crawford. Jordan testified that he had been working with Jackson on his name and that Jordan would repeat his name to Jackson. Jordan felt that it was important for Jackson to have Jordan’s last name and testified that the proposed change “kind of takes a little bit away from me.” Jordan confirmed that he has exercised all of the parenting that he was provided by the court in the paternity proceeding and has paid all of the court-ordered child support. Jordan expressed his concern that Janelle might remarry and change her own last name. Jordan is a public school employee, and he testified about his experience in the school system with children bearing hyphenated last names. According to Jordan, both names are not always used, especially in elementary school, where it is more difficult to teach children both names. Jordan testified that Jackson had contact with Jordan’s extended family and that he felt it was important for Jordan to continue to have the same last name. Jordan testified that the parties had decided to use the surname Crawford when they were dating and that there was a potential they would eventually marry. Jordan confirmed that marriage between the parties was no longer a possibility.

The district court entered an order denying both Janelle’s petition for the name change and her subsequent motion for new trial. Janelle now appeals.

ASSIGNMENT OF ERROR

Janelle asserts, restated, that the district court erred in denying her petition and that it used an incorrect standard in doing so.

STANDARD OF REVIEW

An appellate court reviews a trial court’s decision concerning a requested change in the surname of a minor de novo on the record and reaches a conclusion independent of the findings of the trial court. *In re Change of Name of Slingsby*, 276 Neb. 114, 752 N.W.2d 564 (2008). Provided, however, that where credible evidence is in conflict on a material issue of fact, the appellate court considers and gives weight to the fact that the trial judge heard and observed the witnesses and accepted one version of the facts rather than another. *Id.*

ANALYSIS

The question of whether the name of a minor child should be changed is determined by what is in the best interests of the child. *In re Change of Name of Slingsby, supra*. The party

seeking the change in surname of a minor child has the burden of proving that the change in surname is in the child's best interests. *Id.* Janelle takes issue with the court's statement that she failed to prove that a name change was in both Jackson's best interests and his substantial welfare. However, the Nebraska Supreme Court has noted that cases considering the question of whether a party has met his or her burden of proving that the change in surname is in a child's best interests have granted a change of name only when the substantial welfare of the child requires the name to be changed. See *In re Change of Name of Slingsby*, *supra*, citing *Spatz v. Spatz*, 199 Neb. 332, 258 N.W.2d 814 (1977). The record does not support a conclusion that the district court used an incorrect standard in ruling on Janelle's petition.

The Nebraska Supreme Court has set forth a list of nonexclusive factors upon which the question of whether a change of a minor's surname is in the best interests of the child may depend. These factors are (1) misconduct by one of the child's parents; (2) a parent's failure to support the child; (3) parental failure to maintain contact with the child; (4) the length of time that a surname has been used for or by the child; (5) whether the child's surname is different from the surname of the child's custodial parent; (6) a child's reasonable preference for one of the surnames; (7) the effect of the change of the child's surname on the preservation and development of the child's relationship with each parent; (8) the degree of community respect associated with the child's present surname and the proposed surname; (9) the difficulties, harassment, or embarrassment that the child may experience from bearing the present or proposed surname; and (10) the identification of the child as a part of a family unit. *In re Change of Name of Slingsby*, *supra*.

The district court in this case considered the above factors in making its decision. The court found no evidence that Jordan had engaged in any misconduct or failed to maintain contact with Jackson. The court found that Jordan did not pay child support until ordered to by the court in the paternity case, as the copy of the paternity order attached to Janelle's petition contained an order for retroactive support. However, the court found that the evidence presented in the name change proceedings showed that once ordered to pay child support, Jordan paid as ordered. The court found it unclear precisely when the use of the surname Crawford began--upon Jackson's birth, after the paternity order, or sometime in between--but it determined that Jackson was young enough to have no strong attachment to his last name or an ability to state a preference. The court found no evidence regarding the degree of community respect associated with either the current or proposed surname, but it found some evidence that a hyphenated last name would present some difficulty in school. In particular, the court noted the evidence that a hyphenated last name would be shortened to one name. The court found equivocal evidence regarding the identification of Jackson as part of a family unit. Based on this analysis of the *In re Change of Name of Slingsby* factors, the court concluded that Janelle had failed to prove that "the best interests and substantial welfare of Jackson requires a hyphenation of his last name."

The district court's factual findings are supported by our de novo review of the record, giving weight to the fact that the trial judge heard and observed the witnesses. Based upon our de novo review, we conclude that the evidence presented at trial does not support a finding that it is in Jordan's best interests to change his surname.

Janelle argues that the case of *In re Change of Name of Andrews*, 235 Neb. 170, 454 N.W.2d 488 (1990), wherein the Supreme Court reversed the denial of an application to change

the names of the children to a hyphenated surname using both parents' surnames, is controlling. However, in that case, the Supreme Court relied heavily upon the evidence adduced from a psychologist who testified without contradiction that the best interests of the children would be served by use of the hyphenated surname, basing his testimony on many of the factors enumerated above. We also note that expert testimony was relied upon in arriving at the conclusion that it was not in the child's best interests to change his name in *In re Change of Name of Slingsby, supra*. In the present case, there was no independent evidence to support Janelle's belief that changing Jackson's name would be in his best interests. We conclude that Janelle failed to sustain her burden of proving that the requested name change was in Jackson's best interests.

CONCLUSION

For the reasons discussed above, we affirm the decision of the district court.

AFFIRMED.